

G66HMCCS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 CR 100 (GHW)

5 SEAN McCABE,

6 Sentence

7 Defendant.

8 -----x

9 New York, N.Y.

10 June 6, 2016

2:40 p.m.

11 Before:

12 HON. GREGORY H. WOODS,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 EMIL BOVE

Assistant United States Attorney

18 ROBERT S. GERSHMAN

19 Attorney for Defendant

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(Case called)

MR. BOVE: Good afternoon, Your Honor. Emil Bove for the government.

THE COURT: Thank you. Good afternoon.

MR. GERSHMAN: Good afternoon, your Honor. Robert Gershman on behalf of Mr. McCabe, who is present next to me.

THE COURT: Good afternoon.

Good afternoon, Mr. McCabe.

THE DEFENDANT: Good afternoon, your Honor.

THE COURT: We're here to conduct a sentencing hearing for Mr. McCabe. I've received and reviewed the following materials in connection with the sentencing: A presentence report dated May 13, 2016; the defendant's sentencing memorandum, which is dated May 19, 2016, together with its exhibits; the government's sentencing memorandum, which is dated May 27, together with its exhibits. Just before I took the bench, I was also handed a letter to me dated today from Mr. McCabe. I just read this letter. It is not posted to ECF.

Mr. Bove, have you received this letter?

MR. BOVE: I just received it as well, your Honor.

THE COURT: Let me ask, then, have each of the parties received all of the materials that I've just described?

MR. BOVE: Yes, your Honor.

MR. GERSHMAN: Defense has, Judge.

THE COURT: Thank you. Have the two sentencing

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1 memoranda been filed with the clerk of court?

2 MR. BOVE: The government's has, your Honor.

3 MR. GERSHMAN: Defense as well.

4 THE COURT: Are there any other submissions in
5 connection with the sentencing?

6 MR. BOVE: Not from the government.

7 MR. GERSHMAN: I would just ask maybe till tomorrow
8 after I leave to upload the letter that your Honor received
9 today.

10 THE COURT: Thank you. I will take care of that.

11 MR. GERSHMAN: Thank you, Judge.

12 THE COURT: Thank you.

13 Mr. Gershman, have you read the presentence report?

14 MR. GERSHMAN: I have, your Honor.

15 THE COURT: Have you discussed it with your client?

16 MR. GERSHMAN: I have your Honor.

17 THE COURT: Mr. McCabe, have you read the presentence
18 report?

19 THE DEFENDANT: I have your Honor.

20 THE COURT: Thank you. Have you discussed it with
21 your counsel?

22 THE DEFENDANT: I have, your Honor.

23 THE COURT: Have you had the opportunity to review
24 with your counsel any errors in the presentence report or any
25 other issues that should be addressed by the Court?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Thank you.

3 Mr. Bove, have you read the presentence report?

4 MR. BOVE: I have.

5 THE COURT: Do you have any objections related to the
6 factual accuracy of the presentence report?

7 MR. BOVE: No, your Honor.

8 THE COURT: Thank you.

9 Mr. Gershman, do you have any objections related to
10 the factual accuracy of the presentence report?

11 MR. GERSHMAN: I had filed, when the first report came
12 out, a variety of -- I don't think they're substantive -- that
13 might go to the scoring, but once the addendum came out, they
14 were appropriately notated in the paragraph. So to that
15 extent, I would.

16 THE COURT: Thank you. That's not a completely clear
17 response to my question. Do you have any objections related to
18 the factual accuracy of the presentence report? If so, we'll
19 need to address them. If not, I would adopt those factual
20 findings. If so, however, I need to address any objections and
21 either rule on them or make a determination that they won't
22 have an impact on sentencing.

23 Do you have any objections related to the factual
24 accuracy of the presentence report?

25 MR. GERSHMAN: No, your Honor.

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1 THE COURT: Thank you.

2 Given that there are no objections to the factual
3 recitations in the presentence report, the Court adopts the
4 factual recitations in the presentence report. The presentence
5 report will be made a part of the record in this matter and
6 will be placed under seal. If an appeal is taken, counsel on
7 appeal may have access to the sealed report without further
8 application to the Court.

9 Now, the district courts are no longer required to
10 follow the sentencing guidelines. We are still required to
11 consider the applicable guidelines in imposing sentence. And
12 to do so, it is necessary that we accurately calculate the
13 sentencing range. In this case, the defendant pleaded guilty
14 pursuant to a plea agreement to conspiracy to commit money
15 laundering in violation of 18 U.S.C. Section 1956(h). There is
16 a plea agreement in this case in which the parties stipulated
17 to a particular calculation of the sentencing guidelines.

18 Counsel, can I confirm that I'm correct that the
19 calculation in the presentence report is consistent with that
20 agreement with the exception of the sophisticated laundering
21 enhancement?

22 MR. BOVE: Yes, your Honor.

23 MR. GERSHMAN: Yes, your Honor.

24 THE COURT: Thank you.

25 Mr. Bove, does the government agree that a two-level

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1 adjustment is appropriate here under Section 3E1.1(a).

2 MR. BOVE: Yes, Judge.

3 THE COURT: Is the government moving for an additional
4 one-level adjustment under Section 3E1.1(b)?

5 MR. BOVE: I am.

6 THE COURT: Thank you.

7 I calculate the sentencing guidelines in a manner
8 consistent with the presentence report. I find that the
9 government has failed to meet its burden to demonstrate that
10 the sophisticated money laundering enhancement in this case
11 applies in the case of Mr. McCabe. The applicable sentencing
12 guidelines manual is the November 1, 2015, sentencing
13 guidelines manual. The base offense level is determined
14 pursuant to Section 2S1.1.

15 Pursuant to Section 2S1.1(a)(2), the base offense
16 level is eight plus the number of offense levels from the table
17 in Section 2B1.1 corresponding to the value of the laundered
18 funds. Since the value of the laundered funds is \$200,000, ten
19 levels are added for a base offense level of 18. Because the
20 defendant knew or believed that the laundered funds were the
21 proceeds of a drug trafficking transaction, six offense levels
22 are added pursuant to Section 2S1.1(b)(1). Because the
23 defendant was convicted under 18 U.S.C. Section 1956, an
24 additional two offense levels are added. So the base offense
25 level to this point sums to 26.

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1 The Court acknowledges that the parties' plea
2 agreement contains a stipulated enhancement for sophisticated
3 laundering under Section 2S1.1(b)(2)(B). However, I have my
4 own independent obligation to evaluate the applicable
5 sentencing guidelines range in this matter, and I conclude
6 that, based on the facts before me, the government has not met
7 its burden to demonstrate that the sophisticated laundering
8 section under 2S1.1(b)(2)(B) applies to Mr. McCabe on this
9 record. Because the defendant has a demonstrated acceptance of
10 responsibility for his offense through his plea allocution, I
11 apply a two-level reduction pursuant to Section 3E1.1(a). Upon
12 motion by the government, an additional one-level reduction is
13 warranted under Section 3E1.1(b). As a result, the applicable
14 guidelines offense level is 23.

15 The defendant has one criminal history point resulting
16 from one prior conviction on January 22, 2013. The defendant
17 was sentenced to six months' probation on each of two counts of
18 harassing phone calls with each such term to run consecutively,
19 yielding one criminal history point. In sum, I find that the
20 offense level is 23 and the Criminal History Category is I.
21 Therefore, the guidelines range in this matter is 46 to 57
22 months' imprisonment.

23 Does either party have any objections to the
24 sentencing guidelines calculation?

25 MR. BOVE: No, your Honor.

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1 THE COURT: Thank you.

2 MR. GERSHMAN: No, sir.

3 THE COURT: Thank you.

4 Mr. Gershman, do you wish to be heard with respect to
5 sentencing?

6 MR. GERSHMAN: Yes, sir.

7 THE COURT: Thank you.

8 MR. GERSHMAN: Would it be appropriate if the
9 defendant could be called as a witness at this time?

10 THE COURT: I will allow you to proceed however you
11 wish. I will allow Mr. McCabe to make a statement. Would you
12 like to make a statement before he makes his statement or would
13 you like to have Mr. McCabe alone make a statement? I am very
14 much in your hands as to how you'd best like to proceed. In
15 either event, I do not expect for you to call Mr. McCabe as a
16 witness; rather, I'll accept his statement.

17 MR. GERSHMAN: Okay.

18 THE COURT: Thank you.

19 Mr. Bove, did you want to add something?

20 MR. BOVE: I apologize, your Honor. I was just
21 suggesting to defense counsel that we might confer for a second
22 about how best to proceed.

23 THE COURT: Please do.

24 MR. BOVE: Thank you.

25 (Discussion held off the record)

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1 MR. GERSHMAN: May the defendant remain seated for his
2 statement, Judge?

3 THE COURT: First let me ask you, do you wish to make
4 a statement on behalf of Mr. McCabe, Mr. Gershman?

5 MR. GERSHMAN: I would, if possible, defer till after
6 he makes his statement, Judge.

7 THE COURT: I'd be happy to proceed in that way.

8 Mr. McCabe, do you wish to make a statement?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Thank you. Proceed. Please rise.

11 THE DEFENDANT: Your Honor, I'm aware that you've read
12 the letter that I presented today, and I'm aware of how some of
13 the things that were in the reports submitted by the government
14 made me look. I'm aware that everybody tries to sell their
15 point, and I've made every effort to be as honest as possible
16 and as forthcoming as possible with everybody up to this point.
17 I was anticipating being on the stand and being questioned by
18 both sides, so please excuse my lack of preparation.

19 The circumstances which led up to everything that
20 happened were very unusual and very, very intense, and things
21 that have happened since equally so. But I cannot overstate
22 the amount of regret that I have for what I have done and for
23 the things that I said, and I'm aware that I said a lot of
24 things that look really harmful. However, I ask that your
25 Honor consider that at the time I would have admitted to being

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1 the second man on the grassy knoll if I thought it would have
2 helped matters, if I thought it would have helped to protect
3 the people I was in business with. By "business," I'm talking
4 about the legitimate mining business in Colombia, or I believed
5 it to be.

6 I've let a lot of people down, and I hope to be able
7 to reconcile sooner rather than later. I have an aging mother
8 that I would very much like to see. I have, for lack of a
9 better term, a second family that I feel a great sense of
10 responsibility for. And if you would grant me the opportunity,
11 I promise you I will not let you down. That's all I have.

12 THE COURT: Thank you, Mr. McCabe.

13 Mr. Gershman.

14 MR. GERSHMAN: Thanks, Judge. Would it be all right
15 if I proffer a few things before I get into an argument, Judge?

16 THE COURT: Proceed.

17 MR. GERSHMAN: First about some things that are not in
18 my submission, one is a letter from the defendant's mother.
19 It's talked to in the PSR that his ma is a judge in
20 San Francisco, California. There's some statements that the
21 officer had with his ma; and, ethically, she did not feel it
22 appropriate to write a letter as a judge to your Honor, in a
23 sense did not want to play the judge card to any extent in this
24 matter.

25 They have a close relationship. It talks about, in

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1 the PSR, the family dynamics that happened early, the love that
2 she still has for Mr. McCabe. In the past few years, she came
3 down to Florida to make sure that the businesses he were in
4 were legitimate. They did keep a close relationship, but we
5 would ask that you not take negative that there's no letter
6 there. The letter is not there because of her status and any
7 negative thought that this Court would have that if she wrote a
8 letter as a judge in this matter, it was maybe a little pushy
9 and inappropriate. So she left her comments to the PSR and to
10 my proffer to you.

11 She, of course, loves Mr. McCabe and, like many family
12 members that come before you, would want him to be released as
13 soon as possible. The PSR talks about her then-husband,
14 Mr. McCabe's father, dying early, the effect it had on
15 Mr. McCabe -- and this was in the 1970s in San Francisco -- and
16 the result and effect upon Mr. McCabe in going to, what we
17 refer to, as reform school, needing help for dual-diagnosis
18 issues. He did, in fact, get that help and for a number of
19 years has been clean. So to that extent, the family is
20 grateful for Mr. McCabe's staying clean.

21 Present today in the courtroom in the second row is --
22 the gentleman is a person that helped me. The Court order
23 allowed him access to the MCC for mitigation investigation
24 purposes.

25 Next to him is a woman named Molly Rainey. She was,

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1 at the time of defendant's arrest in 2014, the defendant's
2 then-fiancee. The crime happened, as the Court knows, in June,
3 beginning of June, June 6, I believe. Mr. McCabe is in Panama
4 handing the 160 to the undercover, and there was a waiting
5 period because codefendant Fares had not come into the country.
6 I believe the government wanted to wait till December 2.
7 Codefendant arrived; contemporaneous arrests. During that
8 time, they were fiancee -- Mr. Rainey was his fiancee. Her
9 maiden name was Ms. Raff.

10 My point is this: They've known each other for
11 roughly a decade. Jim Raff, Molly's father, Mr. McCabe's
12 father figure, have been friends and are solid friends. There
13 came an issue, while Mr. McCabe was housed at MCC, that Molly
14 Raff got married and is now Molly Rainey. And because of the,
15 I think, two-tiered love and affection the family had for
16 Mr. McCabe, they were afraid to tell him, afraid to tell him on
17 an emotional, spiritual level and the effect it would have on
18 him while he was alone at MCC.

19 I kept in constant contact with him. They knew why I
20 was coming on Friday and was visiting Mr. McCabe. After I
21 dropped my bags at the hotel, I got to -- he's in Brooklyn. So
22 I got to the main detention center about 1:00-ish. When I saw
23 Mr. McCabe, by 1:00 o'clock both Mr. Raff and Ms. Rainey had
24 advised him on this past Friday that she got married. I would
25 proffer that, although they were -- Molly would say that she's

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1 still in love with him. Mr. Raff would say that -- he still is
2 his significant father figure in life -- they were afraid to
3 tell him over the past year because of the negative mental
4 effect it would have upon him pre-sentencing or afterwards, but
5 they wanted to tell him, although last minute, before I told
6 him that day on Friday.

7 Ms. Rainey would further tell the Court that during
8 their relationship, Mr. McCabe would do anything for her. If
9 she needed help with anything, if she had trouble with a car or
10 trouble with any issues, her phone call would be to Mr. McCabe,
11 and Mr. McCabe was personally there to help her. Ms. Rainey is
12 26 years old, has a bachelor of science, is a fifth grade
13 teacher in a town called Bradenton, which is in Florida. She
14 would say positive things about Mr. McCabe's character as a
15 human being. She still loves him. Obviously, she's married to
16 someone else, but that love has not dwindled or left. She has
17 moved on. That would be my proffer, if the Court would please
18 accept, from Ms. Rainey, Judge. As well, I meant to say on the
19 record that that was my proffer from Judge Lucy McCabe if the
20 Court would accept as well.

21 May I just go on to some other comments, Judge?

22 THE COURT: Proceed.

23 MR. GERSHMAN: All right. I have this date of
24 incident happening on June 6, 2014, where Mr. McCabe does not
25 declare on the form of having greater than \$10,000, going to

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1 Panama and handing 160,000 to the undercover. So there's
2 \$40,000 withheld. I don't think there's a factual issue that
3 Mr. McCabe kept \$13,000 and has no personal knowledge as to the
4 exact division amongst the two codefendants or others as to the
5 disposition of the remaining \$27,000. But Mr. McCabe took 13.
6 I think at first maybe he was promised more, but for whatever
7 reason, he took an even \$13,000.

8 This is a 20-year BOP max with a three-year supervised
9 release. I would agree with the PSR that he cannot afford a
10 fine. His financials are self-explanatory. He has no money.
11 And as Mr. McCabe briefly advised the Court, this crime was
12 done because of the need for money. Mr. McCabe had put money
13 into that legitimate gold mine as well as Mr. Raff put
14 approximately -- and this is just approximations -- 140,000 of
15 his family money in. That was a retirement account his wife
16 had of 40 and another approximate 90 or some of Mr. Raff's own
17 money.

18 I've provided the Court as exhibits to the defense
19 memorandum some documents that I think substantially prove that
20 the gold mine was a legitimate business. I gave the Court a
21 total of exhibits A through I. And I am, just for purposes of
22 this portion of the conversation, directing the Court's
23 attention to those exhibits that are germane to the Colombian
24 mine. The exhibits are listed on the bottom of page 24.

25 Starting with letter C, there's roughly 20 photographs

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1 of Mr. McCabe, Mr. Raff, some of the workers at the mine. The
2 last few pages are of a certain excavator that ended up not
3 working. Money had to be spent to try and get that excavator
4 up, and it was all -- never put into the excavator and that
5 mine never generated income.

6 But afterwards, in letters D, E, F, and G are various
7 exhibits that show money being sent, MoneyGram. The
8 attorneys -- I would call them incorporation or corporation
9 Colombian papers for officially opening the business of that
10 gold mine. There's further government documents showing that
11 that attorney went through lawful resources and avenues to open
12 up that gold mine. I gave the Court just two pages of a
13 checkbook. I have the whole checkbook, but I just gave the
14 Court two pages, the front page and then the first entry, and
15 then communications and the like between the Colombian attorney
16 that was used for this project, the government, and the
17 investors which were, in this case, Mr. McCabe and Mr. Raff.

18 Two other exhibits that I included, before getting to
19 his inmate work in a second, letter B is a Miami Police
20 Department brothers badge. And that is his cooperation, just
21 as a friend of the Miami Beach Police Department officer,
22 helping in working with the agency to shut down two illegal
23 type businesses that Mr. McCabe previously worked,
24 entertainment businesses that Mr. McCabe had knowledge of
25 regarding ordinances, distances, and those things. His friend,

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1 a Miami Dade officer, asked him for help. As a result of
2 certain violence and negative criminal things that were
3 happening, he gave that help just talking. There was no open
4 case or cooperation. It was just help. As a result, the
5 officer gave Mr. McCabe what's referred to as a Miami Police
6 Department brothers badge. I have that. I put two pictures in
7 the exhibit that shows the gentlemen's name, Mr. Freed, the
8 officer, as well as the commemorative badge that's on the other
9 side of the wallet.

10 There are two letters on behalf of Mr. McCabe that I
11 would ask the Court to accept. In them, I think what is most
12 important is what Mr. McCabe has done since he was in MCC,
13 which is listed as letter A. It is now referred to at MCC as
14 the McCabe Program. It had never happened before. It has now
15 been left to others that he has taught how to do it.

16 But in general, Judge, the first couple of pages of
17 Exhibit A were written December 18, 2015, wherein number 10,
18 this positive decision report, which are very rare -- I'm not
19 sure if the Court has ever seen one, but this is out of the
20 U.S. Department of Justice Federal Bureau of Prisons, positive
21 decision report -- front page letter A, talking about
22 Mr. McCabe, his register number, times. And as you go down to
23 number 10, it states: "Inmate McCabe has provided his
24 expertise and service as a volunteer to the education
25 department and to the inmates of this unit, as well as the

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1 general population of the institution, has made himself
2 available to instruct classes in English as a second language,
3 GED and adult continuing education programs, especially with
4 regard to career development skills.

5 "Mr. McCabe has given his time not only during the
6 daily operational hours of the educational department but his
7 own time conducting classes for his fellow inmates on the unit.
8 I can personally attest to the quality of Mr. McCabe's efforts
9 through my own observations and evaluations as his immediate
10 supervisor and by the large number of inmates who participate
11 in the program he provides."

12 The second page goes down different categories:

13 A. Quality of work: Outstanding. Does superior
14 work.

15 B. Quality of work: Outstanding. Drives self
16 exceptionally hard at all times.

17 Initiative: Outstanding. Has good ideas on better
18 ways to do things.

19 D. Eagerness to learn: Outstanding. Eager to master
20 job; wants to know everything there is to know about it.

21 E. Ability to learn: Outstanding. Very quick to
22 learn. Excellent memory.

23 F. Need for supervision dependability, safety, care
24 of equipment: Needs little supervision. Good record of
25 dependability has promptness.

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1 G. Response to supervision: Outstanding. Makes a
2 real effort to please the instructor.

3 H. Ability to work with others: Outstanding. Gets
4 along well with everyone. Very popular.

5 Overall job performance: Promote the person to a more
6 demanding job at a higher pay rate.

7 Then there's a sort of handwritten two-line narrative
8 on the bottom: "For the reasons mentioned" -- I think that
9 says. I can't read that word too well, Judge -- "mentioned
10 above, Mr. McCabe is being recommended for a higher grade level
11 of work."

12 The next page is what he created as a school for the
13 inmates at MCC. It's written as a calendar, and it's printed.
14 It doesn't print necessarily the exact colors that it
15 originally was but goes through language arts, math and
16 English, social studies, ESL, ESL II, math and Spanish; and it
17 has the dates, the times, the whole thing.

18 The next page is a handwritten one that he started
19 almost as a draft. And then afterwards are the certificates
20 that he has earned while he's in MCC, which is Mandarin
21 Chinese, education tutor, reflections, tutor training,
22 Toastmasters International, unit literacy tutor, ESL as a
23 second language. It goes on. It has his tutor agreement which
24 has some numbers, test grade 100, signed off upon his arrival.
25 It thereafter has almost like transcripts. The first two pages

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1 are transcripts from the institution at MCC, and then the last
2 two pages are his grades that are referred to in a separate
3 section from when he was a child. I put those last sheets
4 together with that.

5 So Mr. McCabe worked at least for, if we're averaging,
6 35 hours a week in that division. He worked there for 70-plus
7 weeks at MCC. He's only been in Brooklyn now about two weeks.
8 Again, on average, just by the multiplication, I come up with
9 approximately 2,400-plus hours of work that he has helped with
10 the inmates. Through his help, approximately 350 inmates have
11 passed their GED. There are another 100-plus that are in the
12 testing phase to see where they place to go for that GED.
13 That's the time that he was taken from MCC, just ballparking
14 it, three weeks ago to Brooklyn. He kept everything there for
15 the next person that he taught because, obviously, the end was
16 going to come one way or another, transfer or sentence. So
17 there's catalogs, there's materials, cupboards, and he has
18 trained others to carry on. He also helped others in less
19 formal settings because they knew the work he did. They would
20 come to him and ask him for help in any of the different
21 languages or any of the different topics.

22 To that extent, Judge, in my memorandum, when I
23 discussed this topic in the section asking for variance, I
24 titled that on page 8 "Defendant's Truly Unprecedented
25 Accomplishments During his Pretrial Detention in MCC." I

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1 think, although I'm not supposed to say I, defense thinks that
2 those accomplishments are unique to anyone the Court has seen
3 in the past or will see in the future. You will always have
4 the defendants that will express remorse or be contrite or talk
5 about things that they have done positive on the outside before
6 arrest, but in these 18 months, Mr. McCabe on his own, without
7 Court order, voluntarily has helped, in my opinion, greater
8 than he did even while on the outside. And I think that says
9 something about the person, at least about the person trying to
10 get better, trying to help others, trying to do anything that
11 is positive because at some point of the assimilation into
12 society in the release, whenever the Court deems release is
13 appropriate. He's done great with that, and that stands out
14 above and beyond love and support of family.

15 He's in there alone. As the Court knows, all he has
16 is CorrLinks and a couple hundred minutes on the phone a month,
17 and he took it upon himself and has maintained it. Even when
18 he got to Brooklyn, day of going to Brooklyn, he filled out the
19 form: Let me do it here. Never got a response, maybe because
20 it was too short of a time from this transfer until the
21 sentencing. So I would ask the Court to consider his work at
22 MCC when constructing a sentence.

23 On the first page of my memorandum, I just sort of did
24 a conclusory sort of couple paragraphs where I asked for 23
25 months followed by three years. Part of that thought was the

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1 following: Mr. Cristo-Fares, if I'm pronouncing that right,
2 the Court did not give pretrial supervision because of removal
3 or deportation proceedings, which is usually sort of useless.
4 They come in and have their 24 hours to report. So the Court
5 gave him the high end of the guidelines, 57, I think.

6 The structure that I propose, 23, which is half of
7 bottom, plus maximum three-year pretrial would have Mr. McCabe
8 still supervised in combination by the government for a greater
9 amount of time than Mr. Cristo-Fares. Only for a couple of
10 months, but still for a greater amount of time.

11 That gives, from our position, under the factors and
12 the findings the Court makes, a reasonable sentence, not
13 greater than -- the basic language that the Court will say
14 before imposing whatever the Court imposes upon Mr. McCabe.
15 And we think, from a criminal point of view, he has obviously
16 accepted responsibility. He did the crime. I made an argument
17 on the bond appeal to your Honor which I included in my motion,
18 which I'll refer to as puffery or the argument that the
19 government makes that -- in sort of return to my argument that
20 from June when the crime happened until December when
21 codefendant came back into the country, Mr. McCabe remained
22 crime free, the government made a comment, I think, in their
23 sentencing memo to the effect that, well, that wasn't
24 because -- I'm just paraphrasing, Mr. Bove -- paraphrasing that
25 it wasn't because of not wanting to, because there are

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1 recordings, admittedly, where Mr. McCabe is on the phone --
2 what I would call the puffery because Mr. McCabe never had the
3 ability, the financial ability, the plane ability, the boat
4 ability, or the resources necessary to do any of the things
5 that were discussed on the phone. I'm not minimizing. The
6 discussion should not have happened. It should have been a
7 divorce from the situation once money was delivered. But I
8 would ask the Court to consider that.

9 Another area I would ask the Court to consider was
10 Mr. McCabe was arrested in or around the home where the Raffs
11 are, and that is in the Sarasota, Florida, area. At the time,
12 Mr. McCabe had, besides a valid Colombia work visa, he had a
13 valid Florida carry concealed weapons permit. In Mr. McCabe's
14 car at the Raff's home, where he's not arrested -- he's
15 arrested some yards away. I believe 100. I could be off on
16 that, but it was a distance away -- in the glove compartment of
17 that car is a gun. Mr. McCabe kept the gun in the glove box
18 because -- trying to follow the CCW rules, unloaded that gun,
19 and put the magazines in his pocket. There is a picture in the
20 government's sentencing memorandum that has a picture of the
21 gun which looks like one live round, a magazine outside the
22 gun, and the gun. You can't tell if it's in the glove box or
23 not, but it's for sure a picture of it at the beginning of
24 their sentencing memorandum.

25 When I confront Mr. McCabe with it, he for sure

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1 maintains that the gun is unloaded, because he didn't want the
2 Ruffs to get in trouble. It's at their home. And the
3 ammunition is put in his pockets. There is some discussion in
4 the paperwork about finding a magazine in Mr. McCabe's pocket.
5 The government might make an argument that there were actually
6 two magazines, one from his pocket, one from the photo. I
7 would proffer that Mr. McCabe would say there were two
8 magazines, but both are in his pocket. The gun was left
9 unloaded.

10 Procedurally, Judge, once arrested, as stated in the
11 paperwork, he was cooperative with law enforcement to the
12 extent that they asked him questions and he answered them,
13 incriminating himself. He was taken to the West Palm Beach
14 division of Florida before he was removed here. I was provided
15 discovery in a timely manner, discussed it with the government,
16 and unlike the -- well, not disparaging anyone, I would ask the
17 Court to differentiate the issues with attorneys and discovery
18 as to the other defendant or defendants and realize that
19 everything was done, I thought, smoothly with the government.
20 Discovery provided. I announced in Court when you had a
21 scheduling hearing both defendants were ready for a change of
22 plea. Change of plea happened. There were a couple of
23 continuances. I know I had a personal college thing with my
24 daughter once that caused a continuance, but otherwise, there
25 was no need for the government to spend their resources and

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1 otherwise extend themselves any further than was necessary in
2 this case.

3 If I could just review my notes for a second, please,
4 Judge?

5 THE COURT: Please take your time.

6 MR. GERSHMAN: So there's one other topic, Judge, that
7 I would like to bring up. I'm not sure it carries any weight
8 or thought with you. But this weekend when I was here and
9 doing some research, I found a case out of the United States
10 District Court Eastern District of New York that was filed in
11 the Brooklyn clerk's office on May 25, 2016. I printed it out
12 at the hotel. I did not upload it, but it is written by Senior
13 United States District Court Judge Frederic Block. And I have
14 at least enough copies for your Honor and the government.

15 But if the Court would consider that this opinion
16 discusses what he refers to as, outside of any sentence that
17 the Court gives, the collateral effects upon a convicted
18 defendant on the outside of society which some in the system
19 would call civil death. I don't need to go down the list for
20 your Honor, but your Honor knows that when a defendant is a
21 convicted felon, it talks about -- or His Honor talks about the
22 effects that the federal government's benefits, for example,
23 have upon a convicted defendant. Federal law alone, a felony
24 conviction will render an individual ineligible for public
25 housing; Section 8 vouchers; Social Security Act benefits;

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1 supplemental nutrition benefits; student loans; Hope
2 Scholarship; Legal Services Corp., public housing eviction
3 proceedings; disqualify individuals from holding various
4 positions; and, of course, the "check the box" on the private
5 employer. And as the Court knows, President Obama has
6 initiated by executive order trying to get rid of that "check
7 the box" until the end of the employment process so those
8 capable of fulfilling a job who are convicted felons are not
9 checking that box initially, and that's something that I know
10 from the top is trying to occur.

11 Every state disenfranchises convicted felons to some
12 extent. I think there's a couple exceptions of Maine and
13 Vermont. And in this case, this was a drug trafficking case
14 where a woman was charged with importing cocaine, I think it
15 was 600-plus grams, and possession of cocaine and that this
16 judge on a 20, plus or minus, month guideline sentenced her to
17 one year.

18 There's some other quotes that if I just may take up
19 the Court's time on that for a second, Judge. 20 U.S.C. 1091,
20 defendant is a college student. Held internship as a child.
21 Will be ineligible for grants, loans, work assistance for a
22 period and duration of her college career. There's, of course,
23 the denied admission to federally assisted housing for a
24 reasonable time; not eligible for assistance under any state
25 program as part of Title IV of the Social Security Act. She

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1 cannot be issued a passport during her term of supervision.

2 And then it goes into some of the licensing areas of childcare,
3 pharmaceutical, transportation, hospice, and those areas that
4 need licensing.

5 So to the extent that the Court would consider the
6 collateral effects that this sentence would have on Mr. McCabe
7 upon his exit from BOP, whenever the Court deems that to be
8 fair and reasonable, we would ask the Court to consider that
9 theory. We think that the 23 months followed by three years
10 effectuates the need to confine and supervise Mr. McCabe for
11 the reasons expressed, Judge. If the Court has any questions,
12 I apologize I ran on a little bit, but that will be our
13 presentation please, Judge.

14 THE COURT: Thank you, counsel.

15 Mr. Bove, does the government wish to be heard with
16 respect to sentencing?

17 MR. BOVE: Yes, your Honor. Thank you.

18 With respect to that last point, your Honor, about the
19 collateral consequences of conviction, I'm not sure about the
20 criminal history of the defendant at issue in a case that
21 defense counsel was just describing, but this is not the
22 defendant's first conviction, while although it is actually his
23 first federal conviction. Prior convictions were not enough
24 and the lateral consequences of those convictions were not
25 enough to incentivize this defendant to refrain from further

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1 federal conduct.

2 I know this is the second sentence in this case. Your
3 Honor's read the submissions, and so you're familiar with the
4 conduct itself, having already found that it was indeed
5 serious. This is the type of behavior that facilitates and
6 allows drug traffickers on an international level to engage in
7 these activities. It allows them to do so lucratively and to
8 their financial benefit.

9 There's just two points I want to make in response to
10 the counsel's comments about the conduct. There's a little bit
11 of a back and forth in the submissions about the reason for the
12 gap in time between the delivery of the purported drug proceeds
13 in Panama and the defendant's arrest. We've cited in our
14 submission to these communications between the defendant and
15 one of the confidential sources in August and September of
16 2014. The government's position is that those reflect not
17 puffery, your Honor, but his intent, the defendant's intention
18 that if presented with further opportunities to engage in
19 additional or enhanced criminal conduct, that that was what the
20 defendant wanted to do in late summer and early fall of 2014.

21 Counsel also has made some comments today about the
22 firearm that was seized incident to the defendant's arrest and
23 the reason for its presence and the status of the gun at the
24 time it was seized. The principal aggravating consideration
25 there, your Honor, arises from the defendant's post-arrest

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1 statement. The gun was there for the purpose security. In his
2 words: In case something -- just in case something happened.
3 That firearm was brought to an intended meeting, or the
4 vicinity of an intended meeting, with someone the defendant
5 understood to be an international drug trafficker. It
6 drastically increased the likelihood of danger to others that
7 arises from this offense, and it's another feature of this
8 conduct that is aggravating beyond some of the characteristics
9 with respect to the other defendants.

10 All that said, your Honor, I think the one thing that
11 makes this a complex sentencing is that there is a significant
12 tension between the defendant's history and his offense conduct
13 and, frankly, his statements today and his presentation. I
14 don't think I would be doing my duty to the Court to not
15 acknowledge that some of the things that the defendant and
16 counsel has brought to the Court's attention about the time
17 since his incarceration are mitigating. And on their face,
18 objectively, it's very hard to dispute that, and I'm not
19 disputing that.

20 There is, though, a question here of intent, of who
21 Mr. McCabe really is. And I don't think this is a proceeding
22 where that's going to get resolved or it needs to get resolved
23 except insofar as it bears on his risk of recidivism, and the
24 risk here that this is a defendant who as an individual needs
25 to be further deterred beyond the general deterrence points

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1 that I've made at this and other sentencings.

2 In response, I think that that general concept, one of
3 the things that Mr. McCabe said today was when I was speaking
4 to the confidential source and when I was talking during the
5 offense conduct, I was willing to say whatever was necessary to
6 try and make this go forward. I was in dire straits, and I was
7 desperate. Your Honor, I submit that those incentives are even
8 heavier today. That the defendant is in a position where he
9 needs to tell the Court, he needs to be able to tell your
10 Honor, that he is a changed man and that he is rehabilitated.
11 That argument is called into question by the CFTC-related
12 conduct that is outlined in my sentencing submission. I spoke
13 with counsel before this proceeding, and I think he's going to
14 want to address that when I sit down, and I understand that
15 there's some dispute about whether Mr. McCabe actually knew
16 that that order had been entered by the CFTC. I, frankly, find
17 that puzzling, your Honor if there's a public announcement by
18 federal regulatory body in the vicinity of someone's residence,
19 where they're making their livelihood, that that would not in
20 some way or another, whether to counsel or friends who just
21 read the news and the Internet, be brought to the defendant's
22 attention. I find it hard to believe that that's not the case.

23 But what's more troubling, your Honor, with respect to
24 this question of to what extent should the defendant be
25 credited in claiming to have been rehabilitated today before

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1 the Court, is the conduct itself, because it involves actually
2 victimizing people in what appears, on the face of the CFTC's
3 findings, a fraudulent way. That's not the only time the
4 defendant's engaged in conduct sounding in fraud. His
5 conviction in 1989 also related to insurance fraud. So there's
6 some history, your Honor, here of a man who's willing to say
7 what needs to be said to achieve his own purposes.

8 Again, this is a factual question that I think is very
9 difficult to resolve in a proceeding like this. I submit that
10 there's a significant risk here that this is a defendant who
11 will recidivate because there's a prolonged course of conduct
12 between the CFTC-related activities and then this activity, a
13 man who has now admitted he was desperate and willing to do
14 anything for money, that when presented with a similar
15 situation in the future, that he would make those same
16 decisions.

17 The guidelines here in this case, your Honor, in some
18 respects, I think, understate the seriousness of this offense.
19 The defendant's comments to the confidential source, as I said
20 earlier, reflect an intention to engage in a larger amount of
21 money laundering than just the \$200,000 that were transmitted
22 to Panama. They also reflect a level of communication with at
23 least Tirso Dominguez, if not William Cristo-Fares, that
24 suggests he was aware of the full scope and intention of the
25 discussions that all the defendants were having with the

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1 confidential source. That full scope of that conspiracy, even
2 if it doesn't count for sophistication as a guidelines
3 enhancement, certainly had indicia of sophistication.

4 These are all things, your Honor, I submit, would
5 warrant potentially a sentence above the guidelines. As I've
6 also conceded today, there are some factors that are brought to
7 the Court's attention, and in particular the things that he's
8 done since he was arrested in this case, that I think are
9 mitigating. On balance, given the seriousness of this offense,
10 given his criminal history, the risk of recidivism, I submit
11 that a guidelines sentence is appropriate.

12 THE COURT: Thank you, Mr. Bove.

13 Counsel, Mr. Bove suggested you may want to say
14 something in response to his comments. If you'd like to do so,
15 I'll give you that opportunity.

16 MR. GERSHMAN: Thank you. Just a couple of things,
17 please, if I may. Regarding the continued verbal telephone
18 conversations in the intervening crime to arrest period --
19 again this is proffer, Judge, and I ask the Court to accept --
20 Mr. McCabe was directed to keep that going. He did not further
21 crime or act upon it. He was told to keep these people happy
22 from the codefendant.

23 Issue with the gun, Mr. McCabe would say that he did
24 not make the statement about keeping the gun for protection,
25 for necessity, in any meaning or furtherance of crimes in this

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1 case. I think the PSR also speaks to that.

2 The government talks about the Colorado arrest, which
3 in the PSR is on page 9, and that is 1989 when the defendant
4 was at Gunnison College in Colorado. So that's February.
5 That's 27 years ago. And defendant's memory of that is a
6 conviction for false reporting to authorities. But to put that
7 in context, I think that that occurred while he was a college
8 student. As the PSR mentions, I don't know if it was Gunnison
9 State, Colorado State, but the school was in Gunnison,
10 Colorado, and that happened during his school years.

11 Then, finally, on this civil judgment, I would point
12 out -- and I briefly discussed this as well with the government
13 before coming into court, Judge. They address in their
14 discussion section this federal regulatory action, and I think
15 factually some of the things are incorrect about that beginning
16 on page 8, which is their third point: Third, the
17 circumstances giving rise to a federal regulatory action
18 related to the defendant's 2012 arrest in Florida, which he
19 failed to disclose to the probation office in his sentencing
20 submission, reflect a heightened recidivism.

21 Next paragraph: In August 2012, McCabe was arrested
22 and subsequently convicted of two state law felony counts. I
23 think that's a misprint, because if you look at the PSR,
24 August 2012, page 9, paragraph 44, he got convicted of
25 misdemeanors. So Mr. McCabe stands before the Court having

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1 only been a convicted felon one time, and that is upon Court's
2 acceptance of this plea. Those harassing phone calls out of
3 Broward County, which is Fort Lauderdale, Florida, were
4 misdemeanor harassing phone calls which gave him six months'
5 probation each, page 9, 44. So that's one as to the agency.

6 Then, finally, which I think the government is not
7 confident in the argument I'm about to say to you, and that is,
8 in that regulatory action, he was represented by an attorney
9 named Fred Schwartz who the Court knows maybe from the
10 beginning of this case was an attorney for Halim Fares. After
11 some recordings were given by the government and Mr. Fares was
12 seen with an attorney card of Mr. Schwartz as a Florida -- I'm
13 not sure if he said associate, but a business card that Halim
14 had relative to Fred Schwartz, Fred Schwartz was Mr. McCabe's
15 attorney for that civil matter that the government discussed.
16 I would proffer that before the civil matter was filed or
17 instigated by the agency, Mr. McCabe went into Mr. Schwartz's
18 office, advised him of that civil matter, not criminal. The
19 word "criminal" never came up. Noncriminal in nature. This
20 civil lawsuit. Presented Mr. McCabe with a document to sign to
21 get it over with. Mr. McCabe signed it and moved on. And
22 Mr. McCabe did not think, not only pursuant to Mr. Schwartz's
23 advice at the time, but when he moved forward over the years
24 and the three companies, for credit purposes or any other
25 financial purposes, that judgment never came up. Other things

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1 did that are reflected in the PSR. But that specific judgment
2 that he signed with attorney Fred Schwartz, he remembers
3 signing it, he remembers it resolving when he walked out of the
4 office, and the final words were: You're good, Sean. They
5 can't collect from you. And in Mr. McCabe's mind, it was done
6 and then confirmed done over the years as nothing about it came
7 up.

8 Those are the additional comments. Thank you, Court.

9 THE COURT: Thank you very much.

10 Is there any reason why sentence should not be imposed
11 at this time, Mr. Bove?

12 MR. BOVE: No, your Honor.

13 THE COURT: Thank you.

14 Mr. Gershman?

15 MR. GERSHMAN: No, your Honor.

16 THE COURT: Thank you.

17 I will now describe the sentence that I intend to
18 impose. Counsel will have a final opportunity to make legal
19 objections before the sentence is finally imposed.

20 As I've stated, the guideline range applicable to this
21 case is 46 to 57 months' imprisonment. I've considered the
22 guidelines range. Under the Supreme Court's decision in *Booker*
23 and its progeny, the guidelines range is only one factor that I
24 must consider in deciding the appropriate sentence. I'm also
25 required to consider the other factors set forth in 18 U.S.C.

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1 Section 3553(a). These include, first, the nature and
2 circumstances of the offense and the history and
3 characteristics of the defendant; second, the need for the
4 sentence imposed to (a) reflect the seriousness of the offense,
5 to promote respect for the law, and to provide just punishment
6 for the offense; (b) to afford adequate deterrence to criminal
7 conduct; (c) to protect the public from further crimes of the
8 defendant; and (d) to provide the defendant with needed
9 vocational or educational training, medical care, or other
10 correctional treatment in the most effective manner; third, the
11 kinds of sentences available; fourth, the guidelines range;
12 fifth, any pertinent policy statements; sixth, the need to
13 avoid any unwarranted sentence disparities among defendants
14 with similar records who have been found guilty of similar
15 conduct; and, seventh, the need to provide restitution to any
16 victims of the offense.

17 Ultimately, I'm required to impose a sentence
18 sufficient, but not greater than necessary, to comply with the
19 purposes of sentencing that I mentioned a moment ago set forth
20 in the statute at 18 U.S.C. Section 3553(a).

21 I've given substantial thought and attention to the
22 appropriate sentence in this case. I've reviewed all of the
23 submissions that the parties provided to me. And I've
24 considered all of the Section 3553(a) factors and the purposes
25 of sentencing as reflected in the statute. Now, based on my

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1 review of all of the factors, which I intend to discuss in more
2 detail in a moment, I intend to impose a non-guidelines
3 sentence of 25 months' incarceration to be followed by three
4 years of supervised release, subject to the mandatory and
5 special conditions described in the presentence report which I
6 will detail with more specificity later. I do not expect to
7 impose a fine. I expect to be ordering forfeiture. I will
8 also impose a mandatory fee of \$100.

9 Now, the nature of the crime here is very serious.
10 The defendant conspired to launder funds that he considered to
11 be drug proceeds. The amount of money laundered, I think in
12 this instance, was relatively modest on the grand scheme of
13 things; but I do not understate the amount that money
14 laundering contributes to drug trafficking generally in this
15 country. It is a very serious offense, and it fuels other
16 criminal activity.

17 I spent a lot of time with the materials that were
18 submitted to me about you, Mr. McCabe, and I'd like to review
19 some of those materials now. Mr. McCabe was born in Stanford,
20 California, in 1970. Your parents, both lawyers, separated
21 when Mr. McCabe was seven and, tragically, as we heard again
22 today, his father passed away when Mr. McCabe was only 13.
23 Although Mr. McCabe is the child of a judge who does not want
24 to play the judge card, he was exposed at a young age to drugs
25 and struggled with drug addiction as a teenager. Ultimately,

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1 Mr. McCabe was sent to attend two boarding schools, and I
2 understand was able to successfully conquer his addiction to
3 drugs, a fact that he refers to in his letter to me today.

4 Mr. McCabe attended Western State Colorado University
5 from August 1988 until May 1993. He left in good academic
6 standing to pursue a business venture. Despite the fact that
7 he did not receive a college degree, Mr. McCabe is clearly a
8 very smart man, with many interests and talents: A skier, a
9 dirt biker, guitarist, SCUBA diver, helicopter pilot, and
10 rescue worker. His work history is varied. He has owned and
11 managed adult entertainment establishments in Florida. He's
12 worked as a professional poker player, an import/export
13 consultant, a sales executive in a precious metals company, and
14 owned an interest in an ill-fated gold mine in Colombia, which
15 by the way, Mr. Gershman, is with an "O" when you're referring
16 to the country; "U" when you're referring to the university.

17 Mr. McCabe is a skilled entrepreneurial polymath, but
18 unfortunately not all of his ventures have gone well. He's
19 already crossed the line in one of his business ventures which
20 resulted in a criminal conviction that I detailed earlier and,
21 as I understand it, federal regulatory action.

22 Mr. McCabe has not been married but has a number of
23 strong relationships. Among them, his friendships with the
24 Raff family, both his ex-fiancee, who's here today, and her
25 parents, who submitted very kind letters on his behalf.

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1 Mr. Raff has offered Mr. McCabe a place to live in Florida upon
2 his release. And the level of support from those friends and
3 the regard for his personal qualities weigh favorably as I
4 evaluate Mr. McCabe's sentence for this offense, very much so.

5 I understand that Mr. McCabe's role in this offense
6 was relatively minor, putting aside his comments in the window
7 after he delivered the cash. He was contacted by Mr. Dominguez
8 who acted as at intermediary between him and Mr. Cristo-Fares.
9 Mr. McCabe did not negotiate or organize the money laundering
10 exercises. As I understand it, he was the pointed end of the
11 spear who functioned essentially as a mule to carry the funds
12 from the United States abroad. He did so according to
13 instructions, in a way that I've described in the prior
14 sentencing as very simply by carrying cash in his bag.

15 While the United States points me to comments that
16 Mr. McCabe made during the transaction suggesting a willingness
17 to conduct other more extensive crimes, I have no evidence that
18 he committed any crime during the period after he transported
19 the funds at issue in this case and the date of his arrest.

20 I also take into account the defendant's assertions
21 regarding his severe economic situation that he faced at the
22 time that he chose to undertake this criminal act. A desire
23 for financial gain never justifies crime. I appreciate
24 defendant's argument that he was approached regarding this
25 criminal, I'll call it, opportunity at a time when he was

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1 confronted with a pressing specific financial need to acquire
2 equipment to allow his gold mine venture to get off the ground.
3 I understand that the car that Mr. McCabe was in around the
4 time of his arrest contained an unloaded gun, but I have no
5 evidence that suggests that Mr. McCabe possessed that weapon
6 illegally or that he was involved in any kind of violence in
7 connection with this crime or any other.

8 I believe that a meaningful sentence is important in
9 this case to impose a just punishment. I'm required to
10 consider the deterrent effect both on Mr. McCabe personally and
11 to deter others from committing this crime. With respect to
12 personal deterrence, which I agree with Mr. Bove is a
13 significant issue here, significant because Mr. McCabe,
14 frankly, was old enough at the time of this offense to know not
15 to do what he did; concerning because of his prior criminal
16 conviction. At the same time, I'll be imposing a substantial
17 term of supervised release in addition to what I think is
18 meaningful jail time, which I hope will be sufficient to
19 prevent Mr. McCabe from committing further criminal acts.

20 I must also consider the role of general deterrence,
21 and a meaningful sentence is important to dissuade others from
22 offering to launder drug proceeds. That factor I weigh against
23 the other factors, including the ones that I've just
24 articulated and will proceed to describe in more detail
25 momentarily.

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1 I've considered the need to avoid unwarranted
2 sentencing disparities. In this case I am imposing a shorter,
3 much shorter, period of incarceration on Mr. McCabe than his
4 codefendant Mr. Cristo-Fares. I do that in recognition of the
5 fact that Mr. McCabe's role in this offense is more limited
6 than that of Mr. Cristo-Fares. Essentially, as I said earlier,
7 he acted as a mule for this cash in a transaction coordinated
8 and negotiated by Mr. Cristo-Fares who, unlike Mr. McCabe, was
9 a practicing attorney without great financial need to motivate
10 his offense. While Mr. McCabe's term of incarceration is
11 shorter than that of Mr. Cristo-Fares, as Mr. Gershman notes,
12 Mr. McCabe will also be subject to a substantial period of
13 supervised release.

14 I also take into account the positive acts that
15 Mr. McCabe has undertaken as a prisoner at the MCC and MDC.
16 Mr. Bove asked me to consider that in light of your motivation
17 to present yourself as a person who's rehabilitated himself in
18 connection with this sentencing. That's true of everyone that
19 appears in front of me. You've done more, and I appreciate
20 that, and I think that that's a fact that has to weigh in your
21 favor as I consider the sentencing here. I note your letter to
22 me refers to the philosophy of the Dalai Lama, and the quote
23 from you says that you should do whatever you can to help
24 people in their lives. I appreciate that you've done what you
25 did to help your fellow prisoners, and I hope that you'll

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1 continue to do that in the future.

2 To be clear, you're not helping anybody if you're
3 engaged in criminal acts to do so, and that is not a
4 justification to engage in criminal acts. So to the extent
5 that you view in any part this philosophy as justifying
6 criminal behavior, I do not agree. But I agree with the
7 philosophy that it's good to help if you can, and I hope that
8 you'll do that and you'll take advantage of this time to do so.

9 I believe that the proposed sentence reflects the
10 seriousness of the offense, promotes respect for the law, and
11 provides just punishment under the circumstances. I've
12 considered Mr. McCabe's ability to use the period of
13 incarceration for educational and vocational training, medical
14 care, or other correctional treatment. I appreciate that
15 Mr. McCabe has taken advantage of the existing programming in
16 prison and, more importantly, as I described earlier, I
17 appreciate the affirmative steps that he's taken to educate
18 other prisoners. Those efforts deserve recognition and
19 affirmation.

20 I've considered the kinds of sentences available in
21 this case. While I believe that a sentence with a meaningful
22 term of incarceration is necessary given the nature of the
23 offense and Mr. McCabe's involvement in it, I believe that the
24 blend of time in prison and supervised release is appropriate
25 here.

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1 I've given serious consideration to the guidelines and
2 the policy statements in this case. I believe that a
3 non-guidelines sentence is appropriate. I think that a longer
4 period of incarceration is not necessary in this case, given
5 the nature of Mr. McCabe's role in the offense principally but
6 also given Mr. McCabe's abilities. I hope that he will take
7 this opportunity to make productive use of his skills outside
8 of prison.

9 Mr. McCabe, would you please rise for imposition of
10 sentence. It is the judgment of this Court, Mr. McCabe, that
11 you be sentenced to 25 months of incarceration. I find that
12 sentence to be sufficient, but not greater than necessary, to
13 comply with the purposes of sentencing set forth in 18 U.S.C.
14 Section 3553(a)(2).

15 Following your term of imprisonment, I am sentencing
16 you to a term of three years of supervised release, which is
17 within the guideline range. The mandatory conditions of
18 supervised release shall apply. They are the defendant shall
19 not commit another federal, state, or local crime. The
20 defendant shall not illegally possess a controlled substance.
21 The defendant shall not possess a firearm or destructive
22 device. The defendant shall cooperate in the collection of DNA
23 as directed by the probation officer. The mandatory drug
24 testing condition is suspended due to the imposition of a
25 special condition requiring drug treatment and testing.

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1 The standard conditions of supervised release 1
2 through 13 shall apply. In addition, the following special
3 conditions shall apply: The defendant shall submit his person,
4 residence, place of business, vehicle, and any property,
5 computer (as defined in 18 U.S.C. Section 1030 Exhibit 1),
6 electronic communications, data storage devices, and/or other
7 media under his control to a search on the basis that the
8 probation officer has reasonable belief that contraband or
9 evidence of a violation of the conditions of the release may be
10 found. The search must be conducted in a reasonable time and
11 in a reasonable matter. Failure to submit to a search may be
12 grounds for revocation. The defendant shall inform any other
13 residents that the premises may be subject to search pursuant
14 to this condition.

15 The defendant will participate in an outpatient
16 treatment program approved by the United States Probation
17 Office which program may include testing to determine whether
18 the defendant has reverted to using drugs and alcohol. The
19 defendant shall contribute to the cost of services rendered
20 based on the defendant's ability to pay and the availability of
21 third party payments. The Court authorizes the release of
22 available drug treatment evaluations and reports, including the
23 presentence report investigation report, to the substance abuse
24 treatment provider.

25 The defendant shall be supervised in his district of

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1 residence. The defendant is to report to the nearest probation
2 office within 72 hours of release from custody.

3 Mr. McCabe, there will be no fine because the
4 probation office reports that you are unable to pay one. The
5 defendant must pay to the United States a total special
6 assessment of \$100, which shall be due immediately.

7 Mr. Bove, I understand that the United States is
8 seeking forfeiture of \$40,000; is that correct?

9 MR. BOVE: Yes, your Honor.

10 THE COURT: And you've submitted a form of forfeiture
11 order.

12 Mr. Gershman, do you have any objections to the form
13 of forfeiture order presented by the United States in this
14 matter?

15 MR. GERSHMAN: Defense does not.

16 THE COURT: Thank you.

17 I'm going to order that the defendant forfeit a sum of
18 \$40,000 in U.S. currency. I'm going to enter a written order
19 containing the substance of this order at this time or
20 immediately following this proceeding.

21 Mr. Bove, I understand the government's not seeking
22 restitution; is that correct?

23 MR. BOVE: Yes, Judge.

24 THE COURT: Thank you.

25 Does either counsel know of any legal reason why

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1 sentence shall not be imposes as stated?

2 MR. BOVE: No, your Honor.

3 MR. GERSHMAN: Not from defense, Judge.

4 THE COURT: Thank you.

5 The sentence as stated is imposed. I find that
6 sentence to be sufficient, but not greater than necessary, to
7 comply with the purposes of sentencing set forth in 18 U.S.C.
8 Section 3553(a)(2).

9 You can be seated, Mr. McCabe. Thank you very much.

10 THE DEFENDANT: Thank you very much, your Honor.

11 THE COURT: Mr. McCabe, you have the right to appeal
12 your conviction and sentence except to whatever extent you may
13 have already waived that right as part of your plea agreement.
14 The notice of appeal must be filed within 14 days of the
15 judgment of conviction. If you're not able to pay the costs of
16 an appeal, you may apply for leave to appeal in forma pauperis.
17 If you request, the clerk of court will prepare and file a
18 notice of appeal on your behalf.

19 Are there any other applications at this time,
20 Mr. Bove?

21 MR. BOVE: No, Judge.

22 THE COURT: Mr. Gershman?

23 MR. GERSHMAN: No. Thank you, Judge.

24 THE COURT: Thank you.

25 Let me just take a couple of minutes before we

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1 adjourn. Mr. McCabe, as you can see, I've read through all the
2 materials that were submitted to me very carefully. I think
3 that you're a man with great capacity. That comes through in
4 the materials that are submitted to me. That's part of what
5 makes this situation so unfortunate. I hope that you've
6 learned a lesson from this event.

7 Let me just highlight some things for you. You know
8 you can be caught. You know from this that anybody you talk to
9 could be a government agent. You are now a convicted felon,
10 which I expect would weigh against you if you were ever caught
11 or convicted of another crime and sentenced for it. Your
12 lawyer will advise you on this, but as you just heard, one of
13 the conditions of the terms of your supervised release is that
14 you not commit any other crime. If you commit another crime,
15 that, in addition to the underlying substantive offense, could
16 be viewed as a violation of the terms of your supervised
17 release which, as your will attorney will advise you, would or
18 could result in you being in front of me again for sentencing
19 in connection with the violation of the terms of your
20 supervised release in addition to whatever other sentence is
21 imposed for that other offense.

22 Again, I think that you are a smart man. With those
23 factors in mind, I'm very much expecting that as you weigh
24 decisions that are put in front of you going forward, you are
25 going to choose to avoid further criminal acts. Put simply,

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1 the risk of you being caught again is much higher, and the risk
2 of a significant, even more significant, penalty has
3 dramatically been increased as a result of your conviction and
4 sentence here. So as you run the numbers and evaluate the risk
5 and reward of crime, as you've done successfully as a poker
6 player, I hope that you'll take those factors into account and
7 that will lead you to do the right thing, which is to help
8 yourself and your friends and loved ones but not to allow that
9 desire to help other people lead you to do something like this.
10 I hope you don't, because if you do, I'll see you back here
11 again.

12 With that, let me thank former Ms. Raff for being
13 here. I appreciate your support, your parents' support for
14 Mr. McCabe. Their support for him and providing him a place to
15 be after he's released was a very important factor for me in
16 considering the appropriate sentence for him and in the hope
17 that he'll be able to find a clear path forward after he's
18 released from this time of incarceration. I hope that you and
19 your family members will continue to support him after his
20 release. So thank you very much for doing that.

21 This proceeding is adjourned. Thank you very much.

22 (Adjourned)